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COMMITTEES:
APPROPRIATIONS
JUDICIARY
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ON AGING

March 18, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve
System
2001 C Street, NW
Washington, DC 20001

Dear Chairman Bernanke,

I am writing to highlight the importance of the small issuer exemption in the final rule on debit interchange fees. As the Board of Governors of the Federal Reserve develops its final rule on debit interchange fees, I urge the Board to write its rule in a way that creates a straightforward and definitive exemption for card issuers with less than \$10 billion dollars in assets following implementation.

Last year supported the Durbin Interchange amendment because of the feedback I received from Wisconsin's merchants and business owners on the practices of the major credit card networks. When supporting this amendment, I worked carefully to ensure that Wisconsin's small and mid-sized banks and credit unions received an exemption from the debit interchange rule.

As I write today, I have concerns that the Fed may write this rule in a way that does not protect these smaller institutions in a meaningful way. In your February 17, 2011 testimony before the Senate Committee on Banking Housing and Urban Affairs, you outlined a few reasons why the exemption may not work.

The first concern you outlined was that merchants will reject more expensive cards from smaller institutions that have higher rates. Representatives from Banks and Credit Unions in Wisconsin also share this concern. Currently the card networks require merchants to accept all cards within a given network. If the Fed believes the rule could result in discrimination, then we could avoid any potential problems through an explicit provision in the final rule that states that merchants cannot discriminate between the cards they accept.

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The second concern you raised was that, in practice, community banks would not be exempt from this lower interchange fee. It seems that this concern could be alleviated by ensuring that the larger card networks agree to a two-tier system. Some of the larger issuers have stated they would implement a two-tier system. In fact, these networks currently have multi-tier systems so that different cards are charged different fees. In spite of this, banks back in Wisconsin fear that the two-tier system will not be put into practice. I encourage the Fed to require networks to have a system in place that recognizes certain institutions are exempt from the Fed's rule. This requirement would ensure that the exemption Congress created is properly implemented.

Finally, I hope you are able to incorporate the cost incurred by banks for fraud prevention into the final rule. I have heard from Wisconsin banks concerned that the rate the Fed set in proposed rule is too low and does not adequately account for the costs associated with fraud prevention. The final rule should include an adjustment for fraud prevention so that card issuers can continue providing safe and secure debit cards for their customers.

Mr. Chairman, I am counting on you to write this rule in a way that provides merchants with better market certainty but that also takes into account the costs and fees banks must incur to provide a safe and efficient product to their customers. It is imperative that any final rule is written so that the smaller institutions will be truly exempt when the rule is implemented. I understand the great complexity associated with the task at hand and I thank you for your efforts on this issue. I am confident in your ability to create a rule that reflects Congressional intent for implementation in a fair, effective manner.

Thank you for your consideration of my views on this issue.

Sincerely,

A handwritten signature in blue ink that reads "Herb Kohl". The signature is written in a cursive, flowing style with a large initial "H".

Herb Kohl